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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,369	12/28/2001	Deborah Chrisman	S0595.0078/P078	8707
32172	7590	06/06/2007		
DICKSTEIN SHAPIRO LLP			EXAMINER	
1177 AVENUE OF THE AMERICAS (6TH AVENUE)			VAN DOREN, BETH	
NEW YORK, NY 10036-2714				
			ART UNIT	PAPER NUMBER
			3623	
			MAIL DATE	DELIVERY MODE
			06/06/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/034,369
Filing Date: December 28, 2001
Appellant(s): CHRISMAN ET AL.

MAILED

JUN 06 2007

GROUP 3600

Deborah Chrisman et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/07/2007 appealing from the Office action mailed 03/10/2006.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. Examiner notes that no amendments were filed after final rejection dated 03/10/2006.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Certified Marketing Services (CMS)

www.certifiedmarketingservices.com

Tenma et al.

U.S. 4,947,322

Blank

"Shelf Service; a Greater Reliance by Supermarkets on Third-Party Merchandisers"

Mumford et al. "Men, Women, and the Hiring Function"

Tenser "ASMC chief puts issue on front burner"

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Certified Marketing Services, Inc. (www.certifiedmarketingservices.com) in view of Tenma et al. (U.S. 4,947,322).

As per claim 1, Certified Marketing Services, Inc. teaches a method for managing a store activity, said method comprising:

electronically receiving store information, said store information including information related to the stores (See page 1, sections 1 and 2, page 3, sections 2-6, page 6, sections 1 and 3, and page 7, section 3, wherein store information is received electronically);

electronically receiving information that relates to the product information (See page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3, wherein the tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product related functions in the stores. The type of store (drug store, specialty retailers, etc) is also

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received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1);

electronically receiving labor information, said labor information including information related to labor (See page 8, section 1, page 9, sections 1-4, and page 10, section 2, wherein the labor information related to the labor is electronically received);

electronically receiving labor requirements, said labor requirements representing estimates of time required to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, section 4, and page 7, sections 1-3, wherein the labor requirements wherein the store specifies the approximation of the labor believed to be needed to fulfill the request);

receiving a request for labor to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, section 4, and page 7, sections 1-3, wherein a request for labor to perform said store activity is received);

determining an amount of said labor needed to perform said store activity using said store information, said labor information, and said labor requirements (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the automatic labor request and automatically posts the request as a contract for field workers. The determination uses store information, labor information, and labor requirements);
and

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electronically notifying parties contributing said determined labor (See page 8 and page 9, section 1, page 10, sections 1 and 2, wherein the parties contributing to the determined labor are notified of the potential contract as well as notified when he/she receives the contract to complete the labor).

However, while Certified Marketing Services, Inc. receives information that allows workers to restock, reset, etc., Certified Marketing Services, Inc. does not expressly disclose receiving product information, this product information related to products. Further, while Certified Marketing Service determines amount of labor needed, Certified Marketing Services does not disclose an automatic determination.

Tenma et al. discloses receiving product information, this product information related to products, and used to reset a shelf (i.e. gondola) (See figure 1, column 2, lines 8-15, column 3, lines 40-50, column 4, lines 19-30, wherein product information is stored in the system and used to perform a reset of the gondola).

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores, as stated in page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, the type of store (drug store, specialty retailers, etc) is received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1. Tenma teaches using product information to create a reset for product arrangements in a store. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to expressly receive product information electronically in Certified

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Marketing Services, Inc. in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project and increase the speed with which a satisfactory reset will occur. See column 1, lines 45-60, of Tenma et al.

Further, Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the information received in the automatic labor request and then automatically posts the request as a contract for field workers. The determination uses store information, labor information, and labor requirements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to automate the determination step in order to increase the speed and efficiency of making decisions about labor requirements by automating a manual process. Merely automating a manual process is per se obvious.

As per claim 2, Certified Marketing Services, Inc. teaches wherein said store information further includes at least one of individual store characteristics, store locations, store departments, and store groups (See page 1, sections 1 and 2, page 3, sections 2-6, page 6, sections 1 and 3, and page 7, section 3, wherein store information is received electronically, this information including the store location and store group).

As per claim 3, Certified Marketing Services, Inc. teaches providing at least one graphic representation of said stores in response to said electronically received store information (See page 11, section 3, wherein the tool provides computerized floor plans in response to the received store information). However, Certified Marketing Services, Inc. does not expressly disclose that said at least one graphic representation comprises at least one image of at least one of a store shelf, at least one store aisle, a store entrance, and a store façade.

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Tenma et al. discloses presenting a graphic image of at least a store shelf, the image provided in response to electronically received store and product information (See figure 5, column 1, lines 50-65, column 2, lines 5-20, column 3, lines 40-55, column 4, lines 19-35, wherein a graphic image of a shelf is presented, the image generated on information about the product, shelf, etc. which is electronically entered into the system).

Certified Marketing Services, Inc. discloses providing computerized floor plans of the store, as stated on page 11, section 3. Store shelves, aisles, entrances, and facades are all well known parts of a store and a store floor plan. Tenma et al. discloses presenting a graphic image of at least a store shelf, the image provided in response to electronically received store and product information. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include features such as shelves in the computerized floor plans of Certified Marketing Services, Inc. in order to more accurately represent the stores layout and provide a more satisfactory layout of goods in a short time. See column 1, lines 45-60, of Tenma et al.

As per claim 4, Certified Marketing Services, Inc. discusses wherein information is electronically received that relates to the product information (See page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3, wherein the tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product related functions in the stores. The type of store (drug store, specialty retailers, etc) is also received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1). However, Certified Marketing Services, Inc. does not expressly disclose receiving product information or

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that the product information further includes at least one of individual product characteristics, product categories, and manufacturers.

Tenma et al. discloses electronically receiving product information and that the product information further includes at least individual product characteristics (See figure 5, column 1, line 54-column 2, lines 16, column 3, lines 40-55, column 4, lines 19-35, wherein the product information is electronically received and includes individual product characteristics such as the product's size).

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, product characteristics, product categories, and manufacturers are old and well-known information relating to a product. Tenma et al. teaches receiving product information including product characteristics information and using this information to arrange products on shelves. It would have been obvious to one of ordinary skill in the art at the time of the invention to expressly receive product information electronically in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project.

As per claim 5, Certified Marketing Services, Inc. teaches determining an amount of said labor needed to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers). However, Certified Marketing

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Services, Inc. does not expressly disclose estimating time requirement to perform said store activity.

Certified Marketing Services, Inc. teaches collecting a work request from a store and translating the work request into posting on a website for contracts to be filled by workers, these contracts with specific job requirements, as stated on page 6, sections 1-4, page 7, sections 1-2, and page 9, section 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to expressly estimate the time requirements for contracts in order to more accurately staff projects in compliance with the client's requested time line and budget, as stated on page 4, section 1.

As per claim 6, Certified Marketing Services, Inc. discloses wherein said step of determining said amount of labor further comprises determining a total amount of labor needed to perform said store activity as a function of said store information, information relating to the products, and said labor information (See page 1, sections 1 and 2, page 3, sections 1-2, page 4, sections 1 and 2, page 6, sections 2, 3, and 4, page 7, sections 1-2 and 4, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1, 2, and 3, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers. The number of workers and the contract requirements are a function of store information, labor information, and information related to the products of the store. The tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product related functions in the stores. The type of store (drug store, specialty retailers, etc) is also received by the tool, this type indicating the products offered by

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the store, as shown on page 11, section 1). However, Certified Marketing Strategies, Inc. does not expressly disclose that the determined amount of labor includes a fair share amount of labor needed or specific product information.

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, the type of store (drug store, specialty retailers, etc) is received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to expressly receive product information electronically in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project.

Furthermore, fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

As per claim 7, Certified Marketing Strategies, Inc. teaches determining the requirements for the contracts assigned to each of the parties of the store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2). However, Certified Strategies does not expressly disclose that fair share comprises identifying a total number of hours required for each of said parties with respect to said store activity.

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Fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

As per claim 8, Certified Marketing Services, Inc. teaches wherein said labor information further includes at least one of identification of labor brokers, identification of manufacturers, and identification of labor forces (See page 8, section 1, page 9, sections 1-4, and page 10, section 2, wherein the labor information related to the labor is electronically received, wherein the labor information includes identification of the companies labor force).

As per claim 9, Certified Marketing Services, Inc. discloses a method wherein said store activity is at least one of a store reset, a store remodel, and a category implementation (See page 1, sections 1-2, page 2, section 1, page 3, section 1, page 6, sections 2 and 4, page 9, section 1, page 11, sections 1 and 3, and page 13, sections 1 and 2, wherein the store activity is at least one of store resets, remodels, and category implementation).

As per claim 10, Certified Marketing Services, Inc. teaches a method, the method comprising determining an amount of said labor needed to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers).

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Certified Marketing Services, Inc. further discloses presenting, on a web site, contracts to be filled by workers, these contracts with job requirements (See page 9, sections 1-2, wherein guidelines are provided for job assignments).

However, Certified Marketing Services, Inc. does not expressly disclose that the determined amount of labor is presented as a number of hours.

Certified Marketing Services, Inc. teaches collecting a work request from a store and translating the work request into posting on a website for contracts to be filled by workers, these contracts with specific job requirements, as stated on page 6, sections 1-4, page 7, sections 1-2, and page 9, section 1. It is well-known that a jobs requirements includes the amount of time to be spent on the job. It would have been obvious to one of ordinary skill in the art at the time of the invention to expressly present the determined labor as a number of hours in order to more accurately staff projects in compliance with the client's requested time line and budget, as stated on page 4, section 1.

As per claim 11, Certified Marketing Services, Inc. teaches a method further comprising generating a plurality of reports, said plurality of reports including an invoice report, a billing report, an exception report, and an all store remodel report (See page 1, section 2, page 3, sections 2-6, page 4, sections 1-4, page 7, sections 2-3, page 9, section 4, page 10, section 3, and page 11, section 3, wherein a plurality of reports are generated including an invoice report, a billing report, and an all store remodel report). However, Certified Marketing Services, Inc. does not expressly disclose a fair share report and a noncompliance report.

Certified Marketing Services, Inc. discloses tracking and storing field worker performance as well as generating exception reports, as stated on page 3, section 4, page 4,

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sections 2 and 4, page 9, section 1, and page 10, section 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a fair share report and a noncompliance report in order to increase the applicability of the system to the needs of the users (the clients, management, the workers) by including more functionalities, as stated on page 1, section 2, and page 3, section 3.

As per claim 12, Certified Marketing Services, Inc. discloses a method further comprising electronically receiving feedback from said parties contributing said determined labor (See page 4, section 4, page 9, section 4, and page 10, section 3, wherein the tool electronically receives feedback from the workers who perform the labor).

As per claim 13, Certified Marketing Services, Inc. teaches a method further comprising transmitting a feedback call form to enable parties contributing labor to said store activity to submit feedback regarding said store activity (See page 9, section 4, and page 10, section 3, wherein a feedback call form is transmitted to allow the workers performing the labor to submit feedback regarding their labor).

As per claim 14, Certified Marketing Services, Inc. teaches transmitting a feedback call form to enable parties contributing labor to said store activity to submit feedback regarding said store activity (See page 9, section 4, and page 10, section 3, wherein a feedback call form is transmitted to allow the workers performing the labor to submit feedback regarding their labor). However, Certified Marketing Services, Inc. does not expressly disclose defining a first question regarding said store activity, identifying a format for a first answer to said first question, defining a second question in response to said first answer to said first question, and defining a third question in response to a third answer to said first question.

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Certified Marketing Services, Inc. teaches an online reporting means for feedback.

Branching questions are well known in dynamic online forms. It would have been obvious to one of ordinary skill in the art at the time of the invention to define a first question regarding said store activity, identify a format for a first answer to said first question, define a second question in response to said first answer to said first question, and define a third question in response to a third answer to said first question in order to efficiently elicit the needed information in a structured and organized manner.

As per claim 15, Certified Marketing Services, Inc. teaches modifying at least one of said store information, product information and labor information (See page 1, section 2, page 3, sections 5, page 6, sections 1 and 3, and page 7, section 3, wherein store information includes the report capabilities and needs of the store and Certified Marketing Services is willing to adapt to the needs at a moments notice).

As per claim 16, Certified Marketing Services, Inc. teaches determining a degree of compliance of each of said parties contributing said labor to said store activity (See page 3, section 4, page 4, sections 1-4, and page 9, sections 2-3, wherein a degree of compliance of each worker is determined).

As per claim 17, Certified Marketing Services, Inc. teaches said compliance comprises performing said labor for said store activity and transmitting feedback directed to said labor for said store activity (See page 3, section 4, page 4, sections 1-4, and page 9, sections 2-3, wherein the labor is performed and feedback is transmitted that is aimed at accessing the labor on the store activity (by both the client and the worker)).

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As per claim 18, Certified Marketing Services, Inc. discloses assigning penalties to parties for noncompliance (See page 4, section 2, and page 9, section 3, wherein penalties are assigned to parties for noncompliance). However, Certified Marketing Services, Inc. does not expressly disclose that these penalties are fines.

Certified Marketing Services, Inc. teaches a system wherein a worker is punished for noncompliance with an assigned contract, as stated on page 4, section 2, and page 9, section 3. Fines are old and well known punishments. It would have been obvious to one of ordinary skill in the art to include fines in the punishment of Certified Marketing Services, Inc. in order to decrease the number of workers that do not comply with their assigned contracts by providing an larger punishment for noncompliance.

As per claim 19, Certified Marketing Services, Inc. teaches a method for using a user terminal coupled to a site processor across a communication network to manage a store activity, said method comprising:

electronically receiving store information, said store information including at least one of individual store characteristics, store locations, store departments, and store groups (See page 1, sections 1 and 2, page 3, section 6, and page 6, sections 1 and 3, wherein store information is received electronically, this information including the store location and store group);

electronically receiving information that relates to the product information (See page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3, wherein the tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product related functions in the stores. The type of store (drug store, specialty retailers, etc) is also

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received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1);

electronically receiving labor information, said labor information including at least one of labor brokers, manufacturers, and labor forces (See page 8, section 1, page 9, sections 1-4, and page 10, section 2, wherein the labor information related to the labor is electronically received, wherein the labor information includes identification of the companies labor force);

electronically receiving labor requirements, said labor requirements representing estimates of time required to perform said store activity for each of the categories (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, section 4, and page 7, sections 1-3, wherein the labor requirements wherein the store specifies the approximation of the labor believed to be needed to fulfill the request);

determining a total amount of labor needed to perform said store activity as a function of at least one of said store information, said product information, said labor information, and said labor requirements (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers. The number of workers and the contract requirements are a function of at least store information and labor requirements);

electronically scheduling said store activity, said step of electronically scheduling including electronically notifying parties contributing labor to said store activity and transmitting details of said store activity to said parties (See page 4, sections 1-2, and page 9, sections 1-2,

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wherein the store activity is scheduled with Certified Marketing Services, Inc. See page 8 and page 9, section 1, page 10, sections 1 and 2, wherein the parties contributing to the determined labor are notified of the potential contract as well as notified when he/she receives the contract to complete the labor); and

electronically receiving feedback from said parties contributing said labor to said store activity (See page 4, section 4, page 9, section 4, and page 10, section 3, wherein the tool electronically receives feedback from the workers who perform the labor).

However, Certified Marketing Services, Inc. does not expressly disclose receiving product information, this product information related to products, or determining a fair share of a total amount of labor needed to perform said store activity.

Tenma et al. discloses receiving product information, this product information related to products, and used to reset a shelf (i.e. gondola) (See figure 1, column 2, lines 8-15, column 3, lines 40-50, column 4, lines 19-30, wherein product information is stored in the system and used to perform a reset of the gondola).

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores, as stated in page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, the type of store (drug store, specialty retailers, etc) is received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1. Tenma teaches using product information to create a reset for product arrangements in a store. Therefore, it would have been obvious to one of ordinary skill in the art

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at the time of the invention to expressly receive product information electronically in Certified Marketing Services, Inc. in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project and increase the speed with which a satisfactory reset will occur. See column 1, lines 45-60, of Tenma et al.

Furthermore, fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

Claims 20, 21, 22, 23, 24, 25, 26, 27-30, and 31 recite equivalent limitations to claims 9, 34, 35, 11, 13, 14, 7, 15-18, and 3, respectively, and are therefore rejected using the same art relied upon above.

As per claim 32, Certified Marketing Services, Inc. discloses a system for communicating with a user terminal across a communication network to manage store activity, said system comprising:

a site processor adapted to receive requests from said user terminal through said communications network (See pages 6-7 and 9-10, which discloses a website operable to receive requests from a user over a communications network);

a first software module operating on said site processor, said first software module determining a total amount of labor needed to perform said store activity as a function of at least one of store information, product information, labor information, and labor requirements (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and

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page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers. The number of workers and the contract requirements are a function of at least store information and labor requirements);

a second software module operating on said site processor, said second software module scheduling said store activity, said second software module further notifying parties contributing labor to said store activity and transmitting details of said store activity to said parties (See page 4, sections 1-2, and page 9, sections 1-2, wherein the store activity is scheduled with Certified Marketing Services, Inc. See page 8 and page 9, section 1, page 10, sections 1 and 2, wherein the parties contributing to the determined labor are notified of the potential contract as well as notified when he/she receives the contract to complete the labor and the party is transmitted details concerning the contracted activity); and

a third software module operating on said site processor, said third software module electronically receiving feedback from said parties contributing labor to said store activity (See page 4, section 4, page 9, section 4, and page 10, section 3, wherein the tool electronically receives feedback from the workers who perform the labor).

However, Certified Marketing Services, Inc. does not expressly disclose determining a fair share of a total amount of labor needed to perform said store activity.

Fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

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Claims 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 recite equivalent limitations to claims 9, 21, 22, 11, 13, 14, 7, 15, 16, 17, and 3, respectively, and are therefore rejected using the same art as relied upon above.

(10) Response to Argument

In the Appeal Brief, Appellant provides the following arguments:

- 1) That CMS does not teach or suggest automatically determining an amount of labor needed to perform a store activity using store information, product information, labor information, and labor requirements, which are all received electronically, and that CMS is silent with respect to how the amount of labor is determined and what information is used to make such a determination;
- 2) That CMS does not teach or suggest electronically receiving labor requirements, which represent estimates of time required, to perform said store activities;
- 3) Appellant has given the term “fair share” a special meaning from the specification, for example at paragraphs 8 and 89, and that CMS and Tenma fail to teach or suggest the concept of fair share. Further, Examiner has taken official notice and while she has provided the Blank and Mumford references, she solely relies on CMS and Tenma in the rejections and these references do not teach “fair share”, as disclosed in the specification.

In response to argument 1), Examiner respectfully disagrees. Claims 1 and 8 recite limitations of electronically receiving store information, product information, labor information, labor requirements, receiving a request for labor to perform a store activity, and “automatically

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determining an amount of said labor needed to perform said store activity using said store information, said product information, said labor information, and said labor requirements”.

Based on these limitations, it appears that various information is received and stored and then, based on a request for labor, a determination is made using the various information stored. There is no specific recitation of how the information is used to perform the determination of labor (i.e. if it is used exclusively, if other information is included with the explicitly recited information, etc.) and further there is no algorithm or method recited as to how the information is used.

Therefore, CMS does receive all the information of store information, product related information, labor information, and labor requirements (Examiner asserted a § 103 rejection above based on the term product information. Examiner asserts that the use of product information or information that relates to the product information does not change the basis or logic of the argument here presented) and CMS does determine labor requirements and provide 3rd party labor for 3rd Party In-Store package conversion and signage conversion and installation, Examiner relied upon Tenma et al. to disclose receiving product information, this product information related to products, and used to reset a shelf (i.e. gondola).

As for the term “automatically”, Examiner again points out that the language of the claim limitation does not set forth any exact steps or algorithms to perform the determination, just merely that the determination is “automatically” performed. Automatically, in its broadest reasonable interpretation, would merely mean routinely or in a mechanized manner. Examiner asserted in the final rejection and maintains that merely using a computer to automate a known process does not by itself impart nonobviousness to the invention. Therefore, Examiner

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maintains that making a process automatic was obvious to one of ordinary skill in the art at the time of the invention.

While claim 32 is a system claim with specified software modules, the claim still is merely receiving and communicating information with no specifics of how this information is processed. Therefore, the response above still applies.

In response to argument 2), Examiner respectfully disagrees. See CMS, pages 1, section 2, page 4, and pages 6-7, which discloses using Internet technology to collect data online. The CMS system works with a client to meet goals with respect to time requirements in the 3rd party retail merchandising industry in terms of on-site retail merchandising and detailing, new package conversion, and signage conversion and installation. The system collects information concerning the tasks that need to be performed, the timeframe of these tasks, and how often the fieldworkers need to visit the location. Thus, the system receives via the online form information concerning the needs for work at a store/location by contractors who perform on-site retail merchandising and detailing, new package conversion, and signage conversion and installation. Needs with respect to work performed by fieldworkers and contractors are labor requirements (i.e. what the store requires with respect to work needed to be performed).

In response to argument 3), Examiner respectfully disagrees. On page 14 of the Appeal Brief, Appellant asserts the meaning of fair share from the specification and a discussion to the fact that the inventor may act as his own lexicographer. In these instances, however, the written description must clearly redefine the claim term and set forth the uncommon definition so as to

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put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). As set forth in MPEP 2111.01, words of a claim are given their broadest reasonable interpretation and given their plain meaning unless applicant has provided a clear definition in the specification. In this instance, the specification recites “fair share” in paragraph 89 (page 20, lines 22-25) as “The user is preferably presented with the total number of hours required for each product category 38 for each manufacturer 42 and is presented with the manufacturer's “fair share” percentage of the number of labor hours involved with respect to that category.” The specification later discusses fair share reports, which show the display of the hours discussed above, and the relative amount of labor owed by each manufacturer for a store reset or category implementation. Examiner is unable to find a reference to “fair share” or a specific definition for “fair share” in paragraph 8, and further does not believe that the discussion above in paragraph 89 serves as a specific definition that must be imported into the claim language. Therefore, the term “fair share”, which is a term of the art, is given its broadest reasonable interpretation.

With regards to claim 19, claim 19 recites “determining a fair share of a total amount of labor needed to perform said store activity as a function of at least one of said store information, said product information, said labor information, and said labor requirements”. Examiner further points out that this determination of a fair share amount of labor does not have a functional effect on any other limitation in the claim, as the scheduling of labor in the claim is not connected to the fair share determination. Therefore, Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each

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worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards. Claim 32 also determines a fair share of a total amount of labor, with this determination having no functional effect on the rest of the claimed elements. Therefore, Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards. Independent claim 1 does not include any limitations directed towards a fair share determination.

While dependent claims 6-7, 11, 23, 26, 34, 36, and 39 also recite the term fair share, these dependent claims have the same problem as the independent claims from which they depend in that they do not impart any specific functionality on the rest of the claim. While hours are determined and reports are generated, none of these determinations effect the scheduling occurring the claim. Therefore, again it would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

In the rejections above, examiner asserted that “fair share” is well known in the labor industries. Based on the fact that it is not functionally clear in the claim as to what specifically the fair share calculation is being used for (as discussed above), Examiner has cited several references in the current action. Examiner notes that she sited three reference, not two as asserted by the Appellant – Blank, Mumford et al., and Tenser. “Shelf Service; a Greater Reliance by Supermarkets on Third-Party Merchandisers” by Blank discusses fair share

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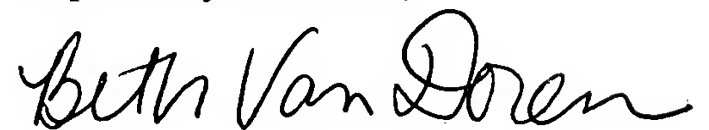
programs in the labor industry, specifically with third party merchandisers that do store resets and remodels, and ensuring that all participants get equal support. Mumford et al. ("Men, Women, and the Hiring Function") that discusses a fair share hypothesis where "each sub-set of the total number of job searchers receives the same proportion of total job offers as their proportion amongst job searches". Tenser ("ASMC chief puts issue of mandating on front burner") that discusses the use of third party merchandisers to handle resets and shelf maintenance, ensuring that the manufacturer of the product in the store is billed a fair share of the costs. Examiner points out that these three prior art references are analogous art since they all discuss fair share in the labor industry.

(11) Related Proceeding(s) Appendix

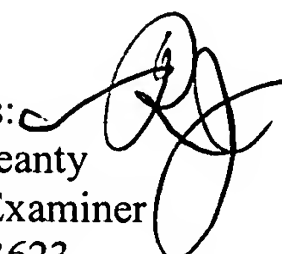
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Beth Van Doren

Primary Examiner
AU 3623

Conferees:
Romain Jeanty
Primary Examiner
Art Unit 3623



Vincent Millin
Appeals Conference Specialist
Art Group 3600